IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6820 of 1987

with

SPECIAL CIVIL APPLICATION Nos. 6825/87, 424/88 and 508/89

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRAVIN H SHUKLA

Versus

CENTRAL BANK OF INDIA

Appearance:
MR RJ OZA for Petitioners
MR ARUN H MEHTA for Respondent No. 1 in SCA 6820/87
MR D.M. PARIKH for Respondent No.1 in SCA 6825/87
MR B.J. SHELAT for Respondent No.1 in SCA 424/88 - Absent
MR D.M. PARIKH for Respondent No.2 in SCA 424/88.
MS P.J. DAVAVALA & MR K.N. RAVAL for Resp.No.1 in SCA 508/89.

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 22/09/2000

ORAL JUDGEMENT

These four petitions involve common contentions and have been argued together by the learned Counsel appearing for the respective parties.

2. The first three petitions are almost identical. The petitioners who are the Bank employees of the Central Bank of India and Bank of Baroda have in these three petitions sought a direction on the Bank not to deduct any wages on the ground of absence of the concerned employees during the period from 23.3.1987 to 28.3.1987 and to treat them as on leave in terms of the applications that they may have made or were entitled to make. The respective Bank employees' Associations have also joined as co-petitioners in these three petitions. The office circular dated 19th September, 1987 at Annexure "B" in Special Civil Application No. 6820 of 1987 issued by the Central Bank which is the basis for such action has been challenged in that petition. Though no such circular of the other Bank is challenged in the other two petitions, the reliefs and directions sought in all the petitions are more or less the same.

3. As per circular of the Central Bank dated 19th Sept. 1987 in context of a call given by the All India Bank Employees' Association for march to Parliament on 27.3.1987, it was clarified that no leave other than sick leave be given to any staff who was the member of the said Association and its affiliated unit for 27.3.1987 as well as the days required for to and fro journey period from the place of work to Delhi, since it was a concerted action of the trade union. It was notified in the circular that any absence of such employees on 27.3.1987 as well as the journey period from the place of their work to Delhi and back should be treated as unauthorised absence and wages should be deducted accordingly for the entire period on the principle of "No work, no pay". A direction is sought on the banks in these petitions for not deducting any wages on the ground of absence of the concerned employees on or around 27th March, 1987.

4. In Special Civil Application No. 508 of 1989, the petitioner Union of the employees of Dena Bank has sought a direction on the Bank for not deducting wages for the month of January, 1989 or any months subsequent thereto on the ground of calls to the concerned employees for attending "Dharna" programme during the period from June, 1984 to September, 1988. A direction is sought to treat the concerned employees as on leave during the

relevant period in terms of the leave applications made by them.

5. The learned Counsel who appeared for the petitioners in all these four matters strongly contended that the decision by the Bank managements that the action of the members of the employees' Union who proceeded on leave was a concerted action, was a unilateral decision which was not binding on these employees. He argued that merely because some employees proceeded on leave, it cannot be said that there was any concerted action on their part within the meaning of the provisions of Section 2(q) of the Industrial Disputes Act. He submitted that the concerted action should be a mass action which has an impact over the function of the entire system. He pointed out that in these matters it is not as if the entire set of employees of the Bank had proceeded on leave, but only those who were mentioned in the lists which are annexed to the respective petitions remained absent, some of whom had proceeded on leave. He submitted that the particulars as regards those who proceeded on leave and those who applied for leave before proceeding on leave or those who applied for leave later on and as regards the type of leave for which they had applied were not available and these particulars would be with the respective Banks. He submitted that in some cases eventhough leave applications were granted, there was an apprehension in the minds of the employees that in view of the approach adopted by the Banks their leave would now be refused and they would be treated as if they were unauthorisedly absent, notwithstanding their leave applications or entitlement to leave. It was submitted that there was a total non-applicability of mind on the part of the management, inasmuch as individual cases were required to be considered for taking an appropriate decision as to whether the leave, if granted was rightly granted, or if not granted, ought to be granted.

6. The learned Counsel who appeared for the Banks contended that the matter was now covered by a decision of the Supreme Court in Syndicate Bank and anr. Vs. K. Umesh Nayak, reported in (1994) 5 SCC 572 and the concerted action such as proceeding for a march to Parliament or for the purpose of "Dharna" could be a valid ground for denying pay for such days of absence on the principle of `No work no pay' and that to be entitled to the wages, the strike has to be both legal and justified and whether the strike is legal or justified are questions of facts to be decided on evidence on record by the industrial adjudication.

7. Under Section 2(q) of the Industrial Disputes Act, 1947, "strike" means a cessation of work by a body of persons employed in any industry acting in combination or a concerted refusal, or a refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment. Therefore, a call by the Union or an Association to proceed to the Parliament for a march or to hold "Dharna" on a working day when the employees were expected to attend to work would in context of the employees who responded to the call and proceeded in such manner, amounted to a concerted action on the part of such employees not to attend to work. Whether an employee actually acted in response to such call or that there were other justifiable reasons for his having applied for leave would be a question depending upon the facts of each individual case.

8. The Hon'ble Supreme Court in Bank of India Vs. T.S. Kelawala, reported in (1990) 4 SCC 744 held that even in absence of provisions regarding deduction of wages for no work, any contract of employment, Standing Orders or the service rules, the management has the power to deduct wages for absence from duty when the absence is a concerted action on the part of the employees and the absence is not disputed. It was held that the service conditions are not expected to visualise and provide for all situations. Hence, when they are silent on unexpected eventualities, the management should be deemed to have the requisite power to deal with them consistent with law and the other service conditions and to the extent it is reasonably necessary to do so. The pro rata deduction of wages is not an unreasonable exercise of power on such occasions. It was held that whether on such occasions the wages are deductible at all and to what extent will, however, depend on the facts of each case. It was also held that disciplinary proceedings were not feasible in cases of admitted mass misconduct such as strike and it is not possible to hold an enquiry nor is it necessary to do so unless, of course, an employee contends that although he did not want to go on strike and wanted to resume his duty, he was prevented from doing so by the other employees. The ratio of the decision in Bank of India Vs. T.S. Kelawala's case was affirmed by the Supreme Court in Syndicate Bank Vs. K. Umesh Nayak (supra), in which it was held in paragraph 25 of the judgement while endorsing the view taken in T.S. Kelawala's case that the workers are not entitled to wages for the strike period even if the strike is legal. It was further held that to be entitled to the wages for the strike period, the strike had to be both legal and

justified and that whether the strike was legal or justified, were questions of fact to be decided on the evidence on record under the Industrial Disputes Act. Such question had to be decided by the industrial adjudicator, it being an industrial dispute within the meaning of the Act. It was held that the High Court had exceeded its jurisdiction in recording the finding that the strike was legal and justified. The Supreme Court held that it was the industrial adjudicator who had the primary jurisdiction to give findings on both the said issues.

9. In K.M. Rami Vs. LIC of India (Special Civil Application No. 4491 of 1985 decided on 23.12.1996) while considering the challenge against the decision of the LIC by which it was ordered to deduct wages of all the Class-III and IV employees who were unauthorisedly remained absent on two days on the ground that there were disturbances in the city and where it was established that the offices of the LIC were infact working and all the Class I and II Development Officers had attended the office and most of the temporary assistants had also attended the office, it was held that it could not be said that the decision of the Corporation to deduct wages for the two days in question for the unauthorised absence of Class-III and IV employees was arbitrary or unjustified.

10. Even in the present case, having regard to the facts and circumstances of the case it cannot be said that the action proposed or the impugned circular were arbitrary or violative of Article 14 or 16 of the Constitution. As held by the Supreme Court in Syndicate Bank's case (supra), the questions regarding the legality of the strike and consequent deduction of wages on the principle of `No work, no pay' can be suitably determined by the industrial adjudicator under the provisions of the Industrial Disputes Act and it is not for this Court to enter into that arena in exercise of its writ powers. All these petitions are therefore, rejected. Rule is discharged in each of them with no order as to costs. Interim relief in each case stands vacated.

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